

**BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA**

In the Matter of:

PAULINA V.,

Claimant,

vs.

HARBOR REGIONAL CENTER,

Service Agency.

OAH No. L 2007020845

DECISION

This matter was heard by Mark E. Harman, Administrative Law Judge of the Office of Administrative Hearings, in Torrance, California, on May 1, 2007.

Steven L. Roberts, Manager of Rights Assurance, represented Harbor Regional Center (Service Agency).

Paulina V. (Claimant), who was not present, was represented by Marianne Bowers, Advocate, Connie V., her mother, and George V., her father.

The parties presented oral and documentary evidence. The record was left open until May 11, 2007, for the filing of closing briefs, which were received from both parties. Claimant also submitted two new exhibits attached to her closing brief. Because the Service Agency was not provided an opportunity to respond to Claimant's new exhibits, these exhibits have not been admitted as evidence in this proceeding. The record was closed and the matter was submitted for decision on May 11, 2007.

ISSUES

1. Should the Service Agency be required to fund 10 hours per week of 1:1 applied behavioral analysis (ABA) intervention services in the home under the applicable provisions of the Lanterman Developmental Disabilities Services Act (the Lanterman Act), Welfare and Institutions Code section 4500 et seq.?

2. If these services are required, should the Service Agency be required to utilize a service provider which specializes in working with adolescents with a diagnosis of autism?

FACTUAL FINDINGS

1. Claimant is nearly 15 years old and is eligible for Service Agency services based on a diagnosis of autism and seizure disorder. She lives with her parents and younger brother. Since September 2006, she has attended an eighth grade special day class program at the Switzer Center located in Torrance. Claimant's parents have requested 1:1 behavioral intervention services in the home to teach Claimant basic self-help skills, such as dressing, brushing her hair, and performing daily personal hygiene.

2. The Service Agency does not believe 1:1 intensive behavior intervention is appropriate for Claimant. The Service Agency believes that "the most effective way of altering Paulina's challenging behavior, as well as increasing her functional skills, is through teaching you to instruct her in her natural environment." (Exhibit SA-B.) The Service Agency offered, as an alternative to the parents' request, "to fund up to four (4) hours per week of parent consultation services related to specific behavioral intervention(s) for Paulina through [Autism Spectrum Therapies] AST," as well as a socialization program combined with a structured after-school program. (Exhibit SA-D.)

3. Claimant's parents' request was supported by Dr. Robin Morris, Psy.D., a licensed clinical psychologist who evaluated Claimant in July 2006. Dr. Morris diagnosed claimant with autistic disorder, as well as qualitative impairments in social interaction, self-help skills and attention. Dr. Morris's evaluation report states that: "Paulina's restrictive range of functioning at the current time is very concerning. . . . Paulina requires a program that specializes in teaching adolescents with autism." Dr. Morris further states: "It is recommended Paulina receive in home intervention 10 hours a week to help in the area of hygiene including bathing and grooming, decreasing frustration, performing daily tasks such as eating, dressing and interacting with family members without verbal and physical aggression." (Exhibit CL-C.)

Background

4. The different professionals who have evaluated Claimant, for nearly as long as she has been receiving services under the Lanterman Act, have not agreed as to whether her delays are the result of an autistic disorder or some other developmental disability. The Service Agency originally determined that Claimant was eligible for supports and services based on a diagnosis of mild mental retardation, along with a seizure disorder. The exact date of this diagnosis and the eligibility determination was not presented. Claimant did not have a diagnosis of an autistic disorder until she was nine years old, and was qualified for special education services by the Redondo Beach Unified School District under the eligibility of "autistic-like features." The Service Agency did not change her eligibility status to autism until January 2007. (Exhibit SA-J.)

5. Since 2001, the Service Agency has provided Claimant's parents with respite services and intermittent behavioral management services provided by Family Behavior Services (FBS), a Service Agency vendor. Claimant's parents attended and successfully completed Managing Behavior Class #1 (August 1, to November 14, 2001). The in-home behavioral support services they received used the parental consultative model to teach the parents strategies to address Claimant's behaviors and increase her compliance with her parent's requests. Claimant's parents believe that these services helped with behavior problems such as tantrumming. These in-home intervention services were provided on several separate occasions: from April 2001 through November 2001; from December 2001 through March 2002; and from October 2002 through April 2003. At no time did Claimant receive direct, or one-on-one, services using the principles of ABA, e.g., discrete trial training (DTT), a recognized teaching method scientifically shown to have a successful outcome in children with autism.

6. At least as early as January 2006, Claimant was refusing to get dressed in the morning or get on the bus for school. Her behaviors, which included screaming, throwing objects, removing clothing, destroying property, aggressiveness toward others, and self-injurious behaviors, became abrasive. Members of her Individual Education Plan (IEP) team created several plans in an attempt to get her to school on time, but these attempts failed, and Claimant stopped attending school regularly. Claimant's dislike for the classroom grew, and on May 2, 2006, she became upset, engaged in self-injurious behaviors, and was carried by three school staff members across the classroom away from the others. Her parents removed her from the school placement.

7. Claimant's parents felt the situation was an emergency and sought further help from the Service Agency, requesting one-to-one direct intervention. The Service Agency insisted that an assessment be conducted first. FBS conducted an assessment to address Claimant's non-compliance and aggressive behaviors in May and June 2006. In her report of July 2006, FBS behavior analyst specialist Marina Garcia (Garcia) reported that Claimant currently engaged in aggression toward others one to two times per week, and engaged in noncompliance to parental requests in one out of 10 opportunities. Garcia recommended a positive behavior support (PBS) plan to be conducted in the home for a period of four months. (Exhibit SA-H.) At around the same time, the School District recommended a change in Claimant's school placement, to a nonpublic school, in a special day class geared toward children with autism, which Claimant began to attend in September 2006.

8. The Service Agency agreed to fund the PBS plan, with AST as the service provider, but the delivery of the services did not occur until late September 2006, by which time Claimant's behaviors had become extreme, and Claimant's parents were facing a crisis. The Service Agency authorized AST to increase the initial hours in response to the parents' request. Remarkably, the AST therapist, on his first home visit, worked directly with Claimant for three hours, which resulted in a dramatic change in her behavior of slamming doors. AST provided approximately 40 hours of services of parent

training and support, and Claimant's challenging behaviors resolved by December 2006. Claimant now loves her school, and she no longer resists with her morning routine.

The current request

9. Claimant's life skills are practically non-existent, and she needs skills training. Claimant has made no progress in her daily living skills since her Individual/Family Services Plan (IFSP) meeting in April 2006. Claimant also has sensory processing issues and tactile defensiveness. (The school district has already conducted an occupational therapy assessment.)

10. There is some disagreement as to how long a period of time Claimant's parents have been requesting intensive 1:1 ABA services to teach Claimant life skills. In the past, Claimant's parents have focused on obtaining behavioral intervention services to address Claimant's extreme behaviors, but they also have raised Claimant's other needs at various times and in previous IFSP meetings. Claimant's father also credibly testified that he was unaware of DTT until the past year. In addition, the fact his daughter was not formally diagnosed with autism for a substantial period of time after she became a Service Agency client affects the amount of time Claimant's parents have been requesting supports and services directly relating to autism.

11. As stated above, the Service Agency has agreed to continue to offer parent consultative services through AST or some other provider to develop Claimant's self-help skills. These services are also ABA-based; however, the PBS therapist trained in: a) how to analyze Claimant's skills; b) how to develop the components of a behavior plan; and c) how to put the components to work by implementing a system of prompts and positive reinforcements, does not teach Claimant directly, as in DTT, but works primarily with training her parents.¹ The Service Agency believes this service model could be used to teach Claimant's parents how to train Claimant to develop her life skills. The Service Agency's witness, Ms. Samantha Persoff, M.Ed., L.C.S.W., a program manager for FBS, testified at the administrative hearing that FBS frequently is involved in

¹ A description of the parental consultative model is set forth in the AST December 2006 progress report. (Exhibit SA-I.) In the parent consultative model, first, the parents are introduced to the program components with the behavioral consultant. Components may consist of proactive strategies, teaching strategies, and reactive strategies specific to the target goals. For example, program goals set for the 2006 intervention included enabling parents "to use positive behavior support strategies to decrease challenging behaviors and increase appropriate behaviors within typical family routines," to increase Claimant's ability to use effective communication, to increase compliance to parental requests, and teach Claimant to use relaxation and coping strategies. Second, the parents are taught to use the components through modeling. Finally, parents are provided an opportunity to implement the strategy with guided practice followed by feedback.

teaching parents to become their child's primary teachers of life skills, such as brushing teeth. As part of their services, an FBS therapist would break down each skill into parts, figure out what skills Claimant possessed, determine what was rewarding her, and then instruct parents on strategies to teach, build and reinforce a skill. FBS does not provide occupational therapy to deal with sensory issues.

12. The Service Agency has stated that it prefers to continue using AST as the service provider because that is "what has worked well for Paulina and her family in the recent past months" in dealing with the parents' behavioral concerns. However, neither FBS nor AST has performed an assessment to determine, specifically in Claimant's case, whether the parent consultative model would be effective in teaching life skills, nor has either estimated the number of service hours that would be required to make the model effective. Also, AST has expressed concerns about working with Paulina's parents because the parents at times have disagreed on the appropriate methods for teaching Paulina, which has engendered conflict in the therapy process and inconsistency in Paulina's interventions.

13. Claimant's mother, who is the primary contact with Claimant, is convinced she does not have the emotional or physical energy at this time to undertake this type of program, and seriously doubts it would be effective to teach her daughter basic life skills. Claimant's parents also are concerned that they will be unable to learn how to break down tasks (for example, the task of brushing teeth, which has at least 14 different discrete components to it) and teach these to Claimant in a systematic fashion.

LEGAL CONCLUSIONS

1. The Lanterman Act codifies the state's responsibility to provide for the needs of developmentally disabled individuals and recognized that services and supports should be established to meet the needs and choices of each person with developmental disabilities. (Welf. & Inst. Code² § 4501.)

2. The Lanterman Act gives regional centers, such as the Service Agency, a critical role in the coordination and delivery of services and supports for persons with disabilities. (§ 4620 et seq.) Thus, regional centers are responsible for developing and implementing individual program plans, for taking into account consumer needs and preferences, and for ensuring service cost-effectiveness. (§§ 4646, 4646.5, 4647, and 4648.)

3. Regional centers, such as the Service Agency, are authorized to enter into contracts with service providers to meet consumers' needs and to achieve IFSP objectives. Claimant needs in-home behavioral services to develop life skills, and her parents have expressed a preference for 1:1 ABA services. It may be premature to determine the best

² All further references are to the Welfare and Institutions Code, unless specified otherwise.

modality for providing behavioral intervention services for the stated goals, because there have been no assessments performed in this regard. There is general agreement that direct, one-on-one ABA services are appropriate and effective therapies for children with autism. However, the Service agency is not required to satisfy every preference of the consumer if an alternative, more cost-effective, method is also effective.

The Service Agency has established a degree of probability Claimant can benefit from continuing to receive behavioral support services through AST, and that these services can succeed in teaching Claimant new life skills. It may very well be that Claimant's parents, with the assistance and guidance of a trained therapist, will be successful in teaching their daughter the daily living skills she needs to become a more independent young adult. At the very least, the Service Agency's plan will avoid the consequences of a longer interruption in services that would be needed to conduct a behavioral assessment for DDT. There is an additional benefit in using a therapist with whom Claimant is familiar. Despite their reluctance, Claimant's parents must attempt to utilize the modality offered by the Service Agency before it can be ruled out.

Rather than requiring another assessment at this time, the best course for Claimant is for AST to restart the PBS services specifically to teach Claimant's parents, as well as to guide them in, how to instruct their daughter in daily living skills, and then conduct an assessment within four months to determine whether the parental consultative modality of delivering behavioral intervention services has been effective in meeting Claimant's needs. If AST is unwilling to provide the behavioral services, the Service Agency must choose an appropriate provider posthaste. The Service Agency must authorize funding of a sufficient number of hours to ensure the services can be effective. The Service Agency also shall require the vendor to prepare an assessment within four months of the start of the services, for consideration by the parents and the Service Agency, to determine whether the services are meeting Claimant's needs.

Because the Service Agency is not being required to provide 1:1 ABA services at this time, there is no need to reach the second issue presented by Claimant's parents.

ORDER

1. Claimant's appeal is denied.
2. Within 10 days of the date of this Decision, the Service Agency shall refer Claimant to AST, or another service provider, for the provision of in home behavioral intervention services using the parental consultative model, for four hours per week, or up to 10 hours per week if deemed necessary by the behavioral therapist in consultation with Claimant's parents and the Service Agency. The primary goal of the services is to teach Claimant basic daily living skills. The Service Agency shall require the service provider to conduct an assessment within four months of the start of the services, to determine the effectiveness of the services in meeting the goals.

3. Within 25 days of the assessment of the behavior intervention services, the Service Agency and Claimant's representatives shall meet to review the assessment and agree upon further implementation of a behavior intervention program designed to meet Claimant's needs.

Dated: May 25, 2007

/s/
MARK E. HARMAN
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter and both parties are bound by this Decision. Either party may appeal this Decision to a court of competent jurisdiction within 90 days.